

BEFORE THE
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

In the Matter of:

NELSON VINSON,

Respondent.

OAH No.: 2010031879

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy, as its Decision in the above-entitled matter.

This Decision shall become effective September 1, 2012.

IT IS SO ORDERED August 2, 2012.

Board of Accountancy
State of California

By



BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

NELSON S. VINSON,

California Practice Privilege Registration
No. LG 86120

Respondent.

Case No: AC 2009 32

OAH No. 2010031879

PROPOSED DECISION

Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 19, 2011, and October 18, 2011, in Los Angeles, California.

Antonio Lopez, Jr. Deputy Attorney General, represented Patti Bowers (Complainant), Executive Officer, California Board of Accountancy (Board), Department of Consumer Affairs, State of California.

Nelson S. Vinson (Respondent) was present at hearing and represented himself.

Oral and documentary evidence was presented and argument heard. The record was closed and the matter submitted for decision on October 18, 2011.

FACTUAL FINDINGS

1. On December 7, 2009, Patti Bowers (Complainant) issued the Accusation solely in her official capacity as the Executive Officer, California Board of Accountancy (Board), Department of Consumer Affairs, State of California. On December 31, 2009, Respondent filed a Notice of Defense and this hearing ensued.

2. On July 21, 2008, the Board issued California Practice Privilege Registration No. LG 86120 (Practice Privilege) to Respondent. Respondent is currently licensed as a Certified Public Account (CPA) by the Texas State Board of Accountancy, License No. F00373. Respondent's Texas CPA license was due to expire on October 31, 2009, and was in full force and effect at all times relevant to the charges brought in the Accusation. Respondent's Registration was in full force and effect at all times relevant to the charges brought in the Accusation and expired on July 21, 2009, pursuant to Business and Professions Code section

5096, subdivision (f). The Board retains jurisdiction to proceed in this matter pursuant to Business and Professions Code section 118, subdivision (b).

3. On July 18, 2008, Roseline Tanglao, who Respondent describes as a "friend of a friend," requested Respondent to perform an audit to determine the financial condition of a partnership between Ms. Tanglao and Rosenda Chapman. The partnership consisted of three long-term care facilities for developmentally disabled individuals. The three facilities were Lin-Ros Best Home Care, Lin-Ros Best Home Care No. 2, and MVM home (hereinafter Facilities). Respondent sought and received a California Practice Privilege from the Board on July 18, 2008, entitling him to perform the audit in the State of California. On September 2, 2008, Respondent issued an audit report specifying the financial condition of the Facilities (hereinafter Audit Report). On September 18, 2008, Respondent sent a letter to Ms. Tanglao withdrawing the "Auditor's Opinion" portion of the Audit Report because he was "representing only your [Ms. Tanglao's] interest in the partnership." On December 30, 2009, Ms. Tanglao signed an affidavit acknowledging that she had accepted Respondent's withdrawal of the "Auditor's Opinion and audit report" effective September 20, 2008, due to a lack of funds to finance the audit and a "lack of information and material facts" to complete the audit. On September 18, 2008¹, Ms. Chapman filed a complaint with the Board asserting that that Respondent was not licensed to perform an audit in the State of California because he not a CPA in the State of California, and should not have been granted a Practice Privilege in California because Respondent resided in California, was licensed in as a CPA in Texas, but did not have an accounting practice in Texas.

Professional Standards

4. Generally Accepted Auditing Standards (GAAS) are issued by the American Institute of Certified Public Accountants (AICPA). The ten general, field work, and reporting standards outlined by GAAS (AU §150), which are interrelated, are discussed in the Statements on Auditing Standards (SAS). The SAS are codified by "AU" number in the AICPA's Codification of Statements on Auditing Standards. Standards applicable to the performance of an agreed-upon procedures agreement are contained in the Statements on Standards of Attestation Engagements (SSAE) and are codified by "AT" number. Reporting (disclosures) standards required by GAAS are issued by either the Financial Accounting Standards Board (FASB) or its predecessor, the Accounting Principles Board (APB). FASB or APB denotes pronouncements issued by these bodies.

5. The Facilities audit performed on behalf of Ms. Tanglao is subject to the above-mentioned accounting principles and standards. Respondent also stipulated at hearing that the standards provided in the GAAS, SAS, and SSAE were applicable to the Facilities Audit Report.

¹ A Summary of Complaint dated August 19, 2009 (Exhibit G) prepared by John E. O'Connor, CPA, the prior investigator on this case, indicates that Ms. Chapman filed her complaint on September 24, 2008. However, the actual complaint letter is date stamped received by the Board on September 18, 2008.

Withdrawal of Audit Report/Opinion

6. Respondent initially contends that he withdrew his Audit Opinion and report shortly after the issuance of the report, and therefore the Board had no jurisdiction to review the Audit Report. The Board asserts that the withdrawal of the Audit Report only serves the purpose of notifying the public and third parties that the report may not be relied upon, but that the original audit report as issued must still comply with applicable auditing standards, and that the Board is not divested of jurisdiction merely because the audit report is withdrawn.

7. Respondent issued the original audit report on September 2, 2008. On September 5, 2008, Respondent submitted a letter to Ms. Chapman requesting additional documents to revise the Audit Report. Respondent referenced the absence of documents for the accrual of the Accounts Receivable for the month of August 2008, which he indicated in the letter "distorts the picture of the actual financial condition of the company." Respondent also referenced signed copies of two amendments on salary increases, and documents related to a refund for a Woodside Homes deposit. Respondent indicated to Ms. Chapman that he had completed the Audit Report without the documents that had been "repeatedly requested," but not submitted by Ms. Chapman. Thereafter, on September 18, 2008, Respondent withdrew the Auditor's Opinion portion of the Audit Report. Ms. Tanglao accepted the withdrawal of both the Auditor's Opinion and the Audit Report on September 20, 2008, citing the lack of funds and information and material facts to complete the audit.

8. Respondent's Audit Report, although withdrawn on September 18, 2008, is still subject to the auditing standards and the Board's review. The evidence showed that Respondent initially issued the Audit Report on September 2, 2008, and was seeking additional information to "revise" the Audit Report. Only after Ms. Chapman filed a complaint with the Board on September 18, 2008, did Respondent seek to withdraw his Audit Report. Moreover, the additional information sought by Respondent apparently was not so significant as to prevent him from issuing the Audit Report in the first instance. Respondent cites SAS 26 to assert he is entitled to withdraw his Audit Report without scrutiny from the Board. However, SAS 26 relates to a Disclaimer of Opinion, which is issued when the auditor can not form, and consequently refuses to present, an opinion on financial statements. This "Disclaimer" is typically issued when the auditor tried to audit an entity but could not complete the work due to various reasons and does not issue an opinion. Here, to the contrary, Respondent issued an audit report and opinion, which he sought to revise with additional information. Thus, for all practical purposes, Respondent's Audit Report had issued. Respondent's decision to withdraw the report and opinion merely notifies the public and third parties that the financial statements and auditor's opinion contained therein, may not be relied upon. The Board retained jurisdiction to determine whether the original audit report met the applicable auditing standards.

Respondent's Principal Place of Business

9. The Board contends that Respondent was not entitled to receive the California Practice Privilege to prepare the attestation and audit report for the Facilities because he did not have a principal place of business outside the State of California, which is required to receive a Practice Privilege in California. Respondent has been employed with the City of Los Angeles since 1995 conducting financial, internal, compliance, and performance audits in his capacity as an accountant. Respondent performed the audit for the Facilities after being requested by Ms. Tanglao to look at the books of the Facilities' partnership. There is no evidence that Respondent has conducted any other independent audit outside of the Facilities audit. Respondent's address of record for his Practice Privilege is 1430 E. Maplegrove Street, West Covina, California 91792. The West Covina address is also the address of record for Respondent's Texas CPA license. In a questionnaire submitted to the Board on July 14, 2009, in response to the complaint filed by Ms. Chapman, Respondent admitted that he did not have a place of business in Texas, nor did he have any clients for which he performed accounting services in Texas from 2003 to 2009. Thus, Respondent did not have a principal place of business or clients for which he performed CPA services in Texas, or any other state outside of California, at the time he applied for the Practice Privilege in California.

10. Respondent essentially argued that the California Practice Privilege does not require that the applicant have a principal place of business outside of California. He contends that California only requires that the applicant *not have* a principal place of business *in California* to qualify for the privilege, and that he did not solicit California clients to perform independent accounting services. Respondent was evasive and nonresponsive at hearing regarding whether he omitted the fact in his Practice Privilege application that he did not have a principal place of business or accounting clients in Texas. The California Practice Privilege provides that the applicant must not have a principal place of business in California and a valid accounting license to qualify for the privilege. Respondent's assertion that as long as he does not have a principal place of business in California he qualifies for the privilege strains the interpretation of the practice privilege. Inherent in the requirement that the applicant not have a principal place of business in California is that the person actually *has a principal place of business somewhere*. Respondent has been employed by the City of Los Angeles since 1995 and has not performed any other accounting work in any other state during this period of time. Respondent has no office or clients in the State of Texas and does not practice in that state. Thus, the only conceivable place Respondent could have a principal place of business would be in California, which would disqualify him for the California Practice Privilege. Thus, Respondent's application for a California Practice Privilege was issued in error based upon Respondent's omission of a material fact and/or misrepresentation of a material fact in his application, that he did not have a principal place of business for his accounting practice outside the State of California.

September 2, 2008 Audit Report

11. Respondent's Audit Report covered the operation of the Facilities from January 1, 2004 through August 23, 2008. The Audit Report was divided into two sections,

an "Audit Report" section and a "Financial Statements" section. The "Audit Report" section included the following subsections: an "Executive Summary" (which included an introduction, stated objectives and methodology used to accomplish the objectives), a Statement of the Results of the Audit, a Statement of the Scope of the Audit, Recommendations by the auditor, and "Findings and Observations" (which describe in more specific detail the results or discrepancies found by the Audit Report and proposed recommendations to correct the discrepancies). Finally, the "Audit Report" section also contained several schedules as attachments which were intended to support Respondent's findings and recommendations. The "schedules" included documents such as: "overpayment on manager's salary" (Schedule A), "dietary & personal care/laundry expenses vs. estimated budget" (Schedule 2), "questionable expenditures" (Schedule 3), "broker's origination/fee paid" (Schedule 4), "analysis of partners' hours worked (Schedule 5), and "comparative partners' salary" (Schedule 6). The "Audit Report" section of the Audit Report is considered an "Agreed-Upon Procedures Report" and is therefore subject to the "agreed-upon procedures engagement" requirements under AT Section 201 of the SSAE.

12. The "Financial Statements" section of the Audit Report included the following subsections: an "Auditor's Opinion," "Internal Control" section, "Important Provisions of General Partnership Agreement," "Balance" and "Profit and Loss" sheets, "Statement of Cash Flows," and several "Schedules." The "schedules" included the following documents: bank reconciliations, accounts receivables, other receivables, furniture and equipment, leasehold improvement, loan costs, startup cost, acquisition costs, accounts payable, partners' capital accounts, real estate owned by partners, and analysis of partners' loan payable. The Financial Statements section is considered a report on audited financial statements and is thus subject to the requirements of the GAAS and SAS, including AU Section 150 and AU Section 508.

Agreed-Upon Procedures Report ("Audit Report" Section)

13. AT Section 201.03 provides that an agreed-upon procedures engagement is one in which the "practitioner is engaged by a client to issue a report of findings based upon specific procedures performed on subject matter. The client engages the practitioner to assist specified parties in evaluating subject matter or an assertion as a result of a need or needs of the specified parties." AT Section 201 requires the auditor to prepare an "agreed-upon procedures report" which specifies the procedures employed by the auditor in performing the audit and the findings that were derived by the auditor from employing those agreed-upon procedures. The "Audit Report" section of the Audit Report, even though not identified by Respondent as such, is deemed an "Agreed-Upon Procedures Report."

14. The Board alleged that Respondent's "Audit Report" section did not comply with SSAE's required elements for an Agreed-Upon Procedures Report. AT Section 201.31 provides that an agreed-upon procedures report should contain specified required elements. Respondent's "Audit Report" section failed to include the word *independent* in its title. The title "Audit Report" is on its face inadequate to convey to the reader that the findings in the report were independently derived by the auditor conducting the audit. Respondent asserts that the statement in the "Audit Report" section that specified the audit was performed in

accordance with the “generally accepted auditing standards” was sufficient because the GAAS requires that “the auditor must maintain independence in mental attitude in all matters relating to the audit” (AU Section 150.02(2).) This statement within the body of the report does not comply with the requirements of AT Section 201.31(a), which further requires that the title include the word “independent.”

15. AT Section 201.31 also requires that an Agreed-Upon Procedures Report identify the specified parties, the subject matter and character of the engagement, identify the responsible party, include a statement that the subject matter is the responsibility of the responsible party, include a statement that the procedures performed were those agreed upon by the specified parties, include a statement that the agreed-upon procedures engagement was conducted in accordance with attestation standards established by the AICPA, a statement that the sufficiency of the procedures is solely the responsibility of the specified parties, and a disclaimer of responsibility for the sufficiency of those procedures.

16. The “Audit Report” section identified Ms. Tanglao as the specified party who retained Respondent to perform the audit. The subject matter and character of the engagement was also identified and the report had a statement that the specified party agreed to the procedures that were to be performed by Respondent. Respondent specified the objectives of the audit and the methodology he intended to employ to achieve the objectives in the “Audit Report” section. The objectives of the audit were to: (1) determine the validity of the expenses paid by the partnership; (2) ascertain the accuracy and completeness of the reported and deposited revenue; (3) evaluate the adequacy of the internal control procedures in the accounting and reporting of expenses and revenue, and (4) assess compliance to government regulations, partnership policies and procedures and partnership agreement. The “Audit Report” section specified that Ms. Tanglao had agreed to “hire an auditor to determine the present financial condition of the company and assess the compliance to governmental regulation and its policies and procedures.” This statement complies with the requirement that the specified party agree to the procedures to be performed. Respondent also included a statement in the “Audit Report” section that indicated the agreed-upon procedures engagement would be conducted in compliance with the AICPA. Although the statement did not specifically state the audit was performed in compliance with the AICPA, Respondent did indicate that the audit was being performed according to “generally accepted auditing standards,” i.e., the GAAS, which are issued by the AICPA. Finally, Respondent’s “Audit Report” section satisfied AT Section 201.31(i)’s requirement that the report contain a list of procedures performed and related findings. The “Audit Report” section had specified objectives and made specified findings and recommendations regarding the stated objectives or agreed upon procedures to be performed.

17. The “Audit Report” section, however, did not identify a “responsible party” or contain a statement that the subject matter of the agreed-upon engagement was the responsibility of the responsible party. Ms. Tanglao, the specified party who retained Respondent, was not the “responsible party” for the subject matter upon which Respondent’s audit was based. AT Section 201.06 requires that the party wishing to engage the auditor for an agreed-upon procedures engagement must be the person responsible for the subject matter, or has a reasonable basis for providing a written assertion about the subject matter, when a

responsible party does not exist; or if not responsible for the subject matter, is able to provide, or have a third party who is responsible for the subject matter, provide the auditor with evidence of the third party's responsibility for the subject matter of the procedures to be performed by the auditor.

18. The evidence showed that Ms. Tanglao was not the responsible party for the subject matter of the agreed-upon engagement. Ms. Chapman was designated in the partnership agreement as the "Manager" of the Facilities, and thus, was responsible for managing the Facilities, including handling the expenses, revenues, accounting, and compliance with government regulations, partnership policies and procedures, i.e., the subject matter of the engagement by Respondent. Respondent did not include a statement that Ms. Chapman was the responsible party for the subject matter of the engagement/audit, or a statement that Ms. Tanglao had provided evidence that Ms. Chapman was the responsible party for the subject matter of the engagement. Additionally, Respondent failed to include a statement in the "Audit Report" section that the "sufficiency of the procedures is solely the responsibility of the specified party [Tanglao] and a disclaimer of responsibility for the sufficiency of those procedures" employed.

19. The "Audit Report" section also did not comply with AT 201.31(k), which requires Respondent to include a disclaimer statement that he was not engaged to, and did not conduct an examination of the subject matter, with the objective to express an opinion; a disclaimer of opinion on the subject matter, and statement that if additional procedures had been performed, other matters might have come to his attention that would have been reported. Finally, Respondent did not include a statement of the restrictions on the use of the report stating that it was intended to be used solely by the specified parties as is required by AT Section 201.31(l).

"Financial Statements" Section

20. The "Financial Statements" section of the Audit Report is the report on audited financial statements, and is thus subject to AU Section 508. The Board again asserts that Respondent failed to include the word "*independent*" in the title of the Audit Report and failed to identify the United States of America as the country of origin for the generally accepted auditing standards used in the report. The Board also contends that Respondent's Auditor's Opinion failed to include the phrase "in all material respects," did not provide an opinion on the cash flow statements, only refers to the year ended December 31, 2007, for the results of operation, rather than all periods presented, and failed to identify the United States as the country of origin for the generally accepted accounting principles used. The Auditor's Opinion is also alleged to have been deficient in that it failed to disclose the reasons for issuing an adverse opinion, it did not confirm accounts payable or receivable, and it did not include the degree of responsibility that the auditor took with respect to supplementary information that was submitted with the financial statements.

21. AU Section 508.01 provides "this section applies to auditor's reports issued in connection with audits of historical financial statements that are intended to present financial positions, results of operations, and cash flows in conformity with generally accepted

accounting principles.” AU Section 501.03 provides that “justification for the expression of the auditor’s opinion rests on the conformity of his or her audit with generally accepted auditing standards and on the findings.” “Generally accepted auditing standards” include four standards of reporting and AU Section 508 is concerned primarily with the relationship of the fourth reporting standard to the language of the auditing report. AU Section 508.04 defines the fourth standard of reporting as follows:

The auditor must either express an opinion regarding the financial statements, taken as a whole, or state that an opinion cannot be expressed, in the auditor’s report. When the auditor cannot express an overall opinion, the auditor should state the reasons therefor in the auditor’s report. In all cases where an auditor’s name is associated with financial statements, the auditor should clearly indicate the character of the auditor’s work, if any, and the degree of responsibility the auditor is taking, in the auditor’s report.

22. AU Section 508.07 provides that “the auditor’s standard report states that the financial statements present fairly, in all material respects, an entity’s financial position, results of operations, and cash flows in conformity with generally accepted accounting principles.” AU Section 508.08 provides that “the auditor’s standard report identifies the financial statements audited in an opening (introductory) paragraph, describes the nature of an audit in a scope paragraph, and expresses the auditor’s opinion in a separate opinion paragraph.” The basic elements of the report are the following:

- a. A title that includes the word independent
- b. A statement that the financial statements identified in the report were audited
- c. A statement that the financial statements are the responsibility of the Company's management and that the auditor's responsibility is to express an opinion on the financial statements based on his or her audit
- d. A statement that the audit was conducted in accordance with generally accepted auditing standards and an identification of the United States of America as the country of origin of those standards (for example, auditing standards generally accepted in the United States of America or U.S. generally accepted auditing standards)
- e. A statement that those standards require that the auditor plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement
- f. A statement that an audit includes—

- (1) Examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements
- (2) Assessing the accounting principles used and significant estimates made by management
- (3) Evaluating the overall financial statement presentation

g. A statement that the auditor believes that his or her audit provides a reasonable basis for his or her opinion

h. An opinion as to whether the financial statements present fairly, in all material respects, the financial position of the Company as of the balance sheet date and the results of its operations and its cash flows for the period then ended in conformity with generally accepted accounting principles. The opinion should include an identification of the United States of America as the country of origin of those accounting principles (for example, accounting principles generally accepted in the United States of America or U.S. generally accepted accounting principles)

i. The manual or printed signature of the auditor's firm

j. The date of the audit report

23. Respondent's Audit Report failed to include the word "*independent*" in the title of the report, and additionally did not include a statement that the audit was conducted in accordance with generally accepted auditing standards *within the United States of America* as is required by AU Section 508.08(a) and 508.08(d) respectively.

Respondent's Auditor's Opinion

24 Respondent's "Financial Statements" section of the Audit Report included a one page "Auditor's Opinion" that indicated Respondent had audited the "accompanying Balance Sheet" of the Facilities as of December 31, 2007, the related Profit & Loss Statement for the period from January 1, 2004, to December 31, 2007, and the Changes to the Partners' Capital Account for the years from 2004 to 2007, and the Statement of Cash Flows from 2006 to 2007. The Auditor's Opinion indicated that "these financial statements are the responsibility of the company's management; our responsibility is to express an opinion on these statements based on our audit." Respondent further indicated in the Auditor's Opinion that he conducted the audit in "accordance with the generally accepted auditing standards." He stated that the audit included "examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements." Respondent indicated in the Auditor's Opinion that he had not "confirmed the Accounts Payable and Accounts Receivable," but that he had "conducted a test of the billings and the deposited collections." Finally, Respondent rendered an

adverse opinion in his Auditor's Opinion specifically opining that "the financial statements referred to above does not present fairly, the financial position of the companies as of December 31, 2007, and the results of its operation for the year then ended in conformity with generally accepted accounting principles..."

25. AU Section 508.59 provides that "when the auditor expresses an adverse opinion, he or she should disclose in a separate explanatory paragraph(s) preceding the opinion paragraph of the report (a) all the substantive reasons for his or her adverse opinion, and (b) the principle effects of the subject matter of the adverse opinion on financial position, results of operations, and cash flows, if practicable. If the effects are not reasonably determinable, the report should so state." Respondent stated in his Auditor's Opinion that the "financial statements" did not "present fairly," and specifically indicated the reasons as follows: (1) the gross overpayment of the manager's salary; (2) questionable overpayment in dietary and personal care/laundry expenses; (3) excessive charges of origination fee/broker's fee on loan mortgages; (4) no appropriate documentation on deposit account written off; (5) checks are issued and fund transfers made in violation of partnership agreement; (6) partner is engaged in outside activities inimical to partnership interest; and (7) Lin-Ros partnership has no lease agreement with partners on buildings used in the conduct of the business.

26. The reasons for Respondent's adverse opinion were more fully discussed in the preceding "Audit Report" section, or the Agreed-Upon Procedures Report, where Respondent made findings and recommendations based upon the agreed-upon procedures (objectives) to be performed. In his Auditor's Opinion, Respondent specifically refers the reader to the "Audit Report" section for a discussion of the reasons for his adverse opinion. This conforms to AU Section 508.59's requirement that separate explanatory paragraphs preceding the auditor's opinion should be used to state the reasons for the adverse opinion. Thus, the allegation that Respondent failed to state the reasons for his adverse opinion in the Auditor's Opinion section of the report were not proven.

27. However, placement of the reasons for the adverse opinion in the "Audit Report" section or Agreed-Upon Procedures Report is confusing and indicative of Respondent's failure to properly organize and label each section of the Audit Report. The format of Respondent's Audit Report merges elements of an Agreed-Upon Procedures Report and the audit of financial statements into one report. Consequently, the sections of the report overlap, are not properly labeled, and tend to confuse the reader.

28. Although Respondent mentions the Statement of Cash Flows in the Auditor's Opinion, he does not offer any opinion regarding the Cash Flow Statement as required by AU 508.08(h), instead he merely included the Cash Flow Statement itself in the report. Consequently, Respondent's Auditor's Opinion did not conform to AU Section 508.08(h).

29. The Board asserts that Respondent also failed to include the phrase, "in all material respects" when stating his opinion in the Auditor's Opinion page. AU Section 508.08(h) provides that when stating an opinion as to whether the financial statements being audited present fairly, the auditor should utilize the term "in all material respects." Here, Respondent's Auditor's Opinion expressed an adverse opinion. It is not at all clear that AU Section 508.08(h) requires the statement "in all material respects" when expressing an adverse opinion. AU Sections 508.58, 508.59, and 508.60 controls how an auditor is to express an adverse opinion. These sections do not require the auditor to include the phrase "in all material respects" when stating that the financial statements do not present fairly the financial position or results of operations or cash flows in conformity with generally accepted accounting principles.

30. The Board asserts that Respondent's statement in the Auditor's Opinion that he had not confirmed the accounts payable and accounts receivable was superfluous and confused the reader when in fact Respondent had confirmed the accounts payable and receivable statements utilizing alternative procedures. Respondent stated that he "conducted a test of the billings and the deposited collections and applying other auditing procedures necessary in the circumstances." Respondent's statement that he had "not confirmed the Accounts Payable and Accounts Receivable" leads the reader to believe the auditor is stating a limitation on the scope of the audit, governed by AU Sections 508.22, 508.23, and 508.24, which necessarily requires the auditor to qualify his or her opinion or to disclaim the opinion for the subject matter being discussed and describe the qualifications in the audit report. It was not necessary for Respondent to indicate that the Accounts Payable and Accounts Receivable were not confirmed, when in fact, he did confirm the accounts using alternative procedures as he stated in his Auditor's Opinion.

31. Finally, the Board alleges that Respondent failed to indicate in the Auditor's Opinion his degree of responsibility for information supplemental to, or accompanying the financial statements. AU Section 551.05 provides that an auditor's report on information accompanying the basic financial statements should clearly describe the "character of the auditor's work and the degree of responsibility the auditor is taking" for the information accompanying the financial statements. The Board does not indicate what information or documents it deemed was accompanying the financial statements in Respondent's audit report. However, the audit report contained numerous "Schedules" that are clearly not a part of the financial statements in the audit. AU Section 551.02 describes "basic financial statements" to include that "balance sheet, statement of income, statement of retained earnings or changes in stockholders' equity, and statement of cash flows." Items considered as part of the financial statements included "descriptions of accounting policies, notes to financial statements, and schedules and explanatory material that are identified as being part of the basic financial statements." AU Section 551.03 describes information to be deemed outside of the basic financial statements to include "additional details or explanations of items in or related to the basic financial statements, consolidating information, historical summaries of items extracted from the basic financial statements, statistical

data, and other material, some of which may be from sources outside the accounting system or outside the entity.”

32. Respondent’s Audit Report included such documents as: Analysis of Partner’s Loan Payable; Schedule of Real Estate Owned by Partners; Partners’ Capital Accounts; and Schedule of Furniture, Appliances and Equipment. It was unclear in the Auditor’s Opinion or the audit report itself, what degree of responsibility Respondent, as the auditor, had in preparing these supplemental documents to the financial statements. Respondent failed to include a statement as is required by AU Section 508.05, describing the character of his work and the degree of responsibility he had in preparing these supplemental documents accompanying the financial statements.

Report on Internal Control

33. Respondent issued an internal control report for the Facilities as part of his Audit Report. The Board contends that he should not have included the internal control report in the audit, but instead, he should have communicated any deficiencies or material weaknesses in internal control discovered during the audit, either orally or in writing, to the Facilities’ partners in a separate correspondence. AU Section 325.04 states that “in an audit of financial statements, the auditor is not required to perform procedures to identify deficiencies in internal control or to express an opinion on the effectiveness of the entity’s internal control.” However, if an auditor becomes aware of deficiencies in internal control during the course of an audit, he or she may choose to identify these deficiencies to the company’s management. AU Section 325.05 provides that a control deficiency exists when “the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis in an audit.” AU Sections 325.17 and 325.18 provide that the auditor should communicate in writing to management, and the audit committee if one exists, all significant deficiencies and material weaknesses in internal control over financial reporting identified during the audit. The written communication should be made prior to the issuance of the auditor’s report, but no later than 60 days following the release of the report.

34. AU Section 325 requires the auditor to report internal control deficiencies to a company’s management prior to the issuance of the audit report, but no later than 60 days after issuance, which necessarily suggests the internal control report is communicated separately from the actual audit report. Respondent cites AU Section 150 in asserting that he is required to include an internal control report in his audit if deficiencies are discovered. AU Section 150.02 provides in pertinent part that “the auditor must obtain a sufficient understanding of the entity and its environment, including its internal control, to assess the risk of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures.” AU Section 150.02 requires the auditor to become sufficiently familiar with an entity’s internal control to identify material misstatements in the financial statements. But it does not require the auditor to report the deficiencies

in the actual audit report. AU Section 325 provides guidance to auditors on how internal control deficiencies must be communicated, and indicates that the internal control report should be communicated outside of the actual audit report. Respondent's inclusion of the internal control report as a part of the Audit Report did not conform to the standards enunciated in AU Section 325.

Financial Statements

35. The Board alleged that Respondent failed to include changes to the partners' capital accounts in the basic financial statements, income statements, or in the notes to the financial statements. The Board relies on the Opinions of the Accounting Principles Board (APB) to make this assertion. APB No. 12, paragraph 10, provides in pertinent part, "that when both financial position and results of operations are presented, disclosure of changes in the separate accounts comprising stockholders' equity ... is required to make the financial statements sufficiently informative." APB No. 12, paragraph 10, further advises that "disclosure of such changes may take the form of separate statements or may be made in the basic financial statements or notes thereto." The Board asserts that because changes to the partners' capital accounts were not included in the basic financial statements or notes thereto, Respondent's financial statements did not conform to APB No. 12. This allegation is not substantiated. Respondent included a separate schedule in the financial statements entitled "Partners' Capital Accounts" which discloses changes to the values in the capital accounts of the partners from 2003 to 2007. APB No. 12, paragraph 10, suggests that disclosures of such changes may be included in either a separate statement, or in the basic financial statements.

Notes to Financial Statements

36. The Board alleged that Respondent failed to include "informative disclosures" with the financial statements as required by GAAS' third standard of reporting and other applicable standards. Specifically, the Board contends that Respondent failed to include the following disclosures: (a) Summary of Significant Accounting Policies (as required by APB 22, paragraphs 8, 12, and 13); (b) Allowance for Doubtful Accounts (as required by FAS 4, paragraphs 8 and 22, and APB 12, paragraph 3); (c) Depreciation and Amortization Methods (as required by APB 12, paragraph 5); Related Party Transactions (as required by FAS 57, paragraph 2); (d) Long-Term Debt (as required by FAS 47, paragraph 10); and (e) Capital and Operating Leases (as required by FAS 13, paragraph 16). The Board contends that Respondent also failed to include disclosures regarding the Statement of Cash Flows. Respondent defended that he did not submit notes to the financial statements because the other Facilities' partner, Ms. Chapman, ceased cooperating with the audit and refused to submit documents needed to complete the audit.

37. Although Respondent included a Statement of Cash Flows in the financial statements, he did not include disclosures regarding the amounts of interests paid and income taxes paid during the reporting periods as required by FAS 95,

paragraph 29. Respondent admitted he did not make disclosures with the financial statements due to lack of cooperation by Ms. Chapman. However, the evidence showed that Respondent was only missing the accrual for the Accounts Receivable for the month of August 2008, signed copies of two amendments on salary increases, and documents related to a refund for a Woodside Homes deposit. It is not clear how these few documents prevented Respondent from making the required disclosures with the financial statements. Respondent's failure to include the disclosures specified in Factual Finding 36 constituted a departure from the GAAS's third standard of reporting and applicable standards.

Working Papers

38. The Board asserts that Respondent failed to adequately define the overall "audit strategy" in his working papers as required by AU Section 311.13. The Board's Accusation references an "Audit Plan" prepared by Respondent, asserting that the "Audit Plan" failed to include discussions of industry specific reporting, materiality levels, preliminary identification of risk of material misstatements, or consideration of fraud. Neither the Board nor Respondent's exhibits contained a document entitled "Audit Plan" although both referred to this document in their arguments. However, a review of Respondent's working papers and audit report revealed no discussion of an audit strategy or audit plan. Respondent defends that substantial discussion of the audit strategy and audit plan were discussed in the "Audit Report" section of the Audit Report, although he concedes that "industry" information was not included in his report.

39. AU Section 311.14 requires that the auditor establish an audit strategy to determine the characteristics of the engagement that define its scope, such as the basis of reporting, industry-specific reporting requirements, and locations of the entity. The audit strategy should also include the reporting objectives of the engagement, and consideration of important factors that determines the focus of the audit team's efforts, such as determination of materiality levels, identification of areas of high risks of material misstatements, evaluation of whether the auditor plans to obtain evidence regarding the effectiveness of the internal control operation, and identification of recent significant entity-specific, industry, financial reporting, or other relevant factors.

40. There is no evidence of an audit strategy or plan in Respondent's working papers. Although Respondent states that his audit plan was included in the "Audit Report" section of the report, this section merely stated general client information, audit objectives, and some audit procedures. This information did not satisfy the requirements of the AU Section 311.13 and 311.19 for developing an audit strategy and audit plan, and documenting the strategy and plan in the working papers for the audit. Respondent did not meet this requirement in the Audit Report.

41. The Board also asserts that Respondent failed to document in the working papers discussions of material misrepresentations due to error or fraud, which failed to conform to AU sections 314.22 and 316.83. Respondent defends that on August 18, 2008, he discussed with the client, Ms. Tanglao, material misstatements and the

appearance of fraud that was discovered by his audit. Respondent's Exhibit "P" includes a memorandum to file which documents the August 18, 2008, discussion between Respondent and Ms. Tanglao. Respondent essentially informed Ms. Tanglao about "troubling information" discovered during his examination of the Facilities records, including the use of partnership funds by Ms. Chapman for gambling purposes. Tanglao advised Respondent that "we just leave this as is and do not do anything about it since she [Ms. Chapman] claims she had paid back to the partnership whatever she used for gambling." Respondent confirmed with Ms. Tanglao that she did not want to pursue the matter, and Ms. Tanglao requested that he treat the matter as confidential, suggesting that he not include it in his report. Respondent argues that the client's decision not to pursue this matter justifies his failure to include the material misrepresentations in the working papers. Even though Respondent relies on his client's request to keep this information confidential and not to include the material misstatements in the audit report or working papers, AU Section 314.122 requires that such discussions should be documented and included in the auditor's report. Respondent's failure to do so constitutes a departure from applicable standards and does not conform to AU Sections 314.122 and 316.83.

42. The Board contends Respondent failed to consider audit risk or to determine a materiality level of such risks as required by AU Sections 312.11, 312.12, 312.13, and 312.27. AU Section 312.11 provides that the auditor must consider audit risk and must determine a materiality level such risks pose for the financial statements taken as a whole. Respondent included a risk assessment in the working papers entitled "Assessment of the Internal Controls." This section of the working papers identifies errors or mistakes may have been committed in the areas of policies and procedures, the partnership agreement, cash receipts, cash disbursements, changes to capital accounts, and the general journal book. Respondent notes irregularities or errors, and makes a general assessment of the risks for these areas, but he neglects to specify the materiality level these risks pose for the overall reliability of the financial statements. This omission violates AU Sections 312.11, 312.12, 312.13, and 312.27.

43. Finally, the Board contends that Respondent failed to document that he had evaluated the five components of internal control, or that he evaluated the risk of material misstatements in the financial statements as required by AU Sections 314.40 and 314.102. Respondent does not identify or discuss the five components of internal control in his working papers. AU Section 314.41 identifies the five components as: (1) control environment (sets the tone of an organization by influencing the control consciousness of its people, thereby providing discipline and structure), (2) risk assessment (entity's identification and analysis of relevant risks to achieving its objectives and how risks should be managed), (3) information and communication systems (supports the identification, capture, and exchange of information to enable people to carry out their responsibilities), (4) control activities (policies and procedures to ensure management directives are carried out), and monitoring (process that assesses the quality of internal control performance over time).

44. AU Section 122 requires the auditor to document key elements of the understanding obtained regarding each of the aspects of the entity and its environment, "including each of the components of internal control ... to assess the risks of material misstatement of the financial statements; the sources of information from which the understanding was obtained; and the risk assessment procedures." Even though Respondent included an "Internal Control Report" and an "Assessment of the Internal Controls" section in his working papers, there is no indication that he assessed the effectiveness of the Facilities' internal controls applying the five components of internal control specified in AU Section 314.41. There is no documentation that Respondent considered these five components, other than the risk assessment mentioned above, when evaluating the financial statements of the Facilities. Further, Respondent again failed to indicate, either in the working papers, or any other place in the audit, whether and how material misstatements may have been included in the financial statements due to deficiencies in the Facilities' internal controls.

Costs of Investigation and Prosecution

45. The Board incurred \$24,774.04 as its costs of investigation and prosecution in this matter. The costs included \$10,366.04 in the Board's investigation costs (81.75 hours at \$126.29 per hour) and \$15,408 in Attorney General's prosecution costs (91.25 hours of attorney time at \$170 per hour). These costs, established by a Certification of Prosecution Costs and Declaration by Antonio Lopez, Jr., and Certification of Costs of Investigation and Prosecution by Patti Bowers, Executive Officer of the Board, are deemed reasonable and granted in full pursuant to Business and Professions Code section 5107.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke Respondent's California Practice Privilege Registration, pursuant to Business and Professions Code² sections 5096.3, subdivision (a), 5100 subdivision (b), and 498, in that Respondent secured his California Practice Privilege Registration by knowing misrepresentation of a material fact, or by knowingly omitting to state a material fact in his application for the practice privilege, by reason of Factual Findings 9 and 10.

2. Section 5096.3, subdivision (a), provides that "practice privileges are subject to revocation, suspension, fines or other disciplinary sanctions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations implementing this article." Section 5096.3, subdivision (b), provides that "practice privileges are subject to discipline during any time period in which they are valid, under administrative suspension, or expired." Section 498 provides that "a Board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the

² All further references shall be to the Business and Professions Code unless otherwise specified.

license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.”

3. Section 5096 provides in relevant part that:

a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure which have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

3. As set out in Factual Finding 9 and 10, Respondent is licensed as a CPA in the State of Texas. The evidence showed that Respondent has not practiced in the State of Texas, and does not have an office or any clients in the State of Texas. Respondent has been employed by the City of Los Angeles as an accountant since 1995 and he resides in West Covina, California. Consequently, Respondent has not established that he has a principal place of business in Texas or any other state, other than the State of California. Section 5096 requires that an applicant for a California Practice Privilege must have a principal place of business that is not in the State of California. In a questionnaire submitted to the Board on July 14, 2009, in response to the complaint filed by Ms. Chapman, Respondent admitted that he did not have a place of business in Texas, nor did he have any clients or performed any accounting services for any clients in Texas from 2003 to 2009. Respondent knowingly omitted information that he did not have a principal place of business in the State of Texas when he submitted his application for a practice privilege registration. Respondent indicated in his application that his CPA license was in the State of Texas, but neglected to further state that he was not practicing in, or did not have an office or any clients in the State of Texas. Thus, Respondent failed to satisfy the requirement that he have a principal place of business outside of the State of California, and therefore was not eligible to receive his California Practice Privilege Registration on July 21, 2008.

4. Cause exists to suspend or revoke Respondent's California Practice Privilege Registration pursuant to sections 5096, subdivision (a), 5100 subdivision (c), and 498, in that Respondent committed gross negligence, and/or, repeated acts of negligence, for issuing an audit report on September 2, 2008, for the Facilities, which failed to follow professional standards for an attestation and audit engagement and contained extreme departures for generally accepted auditing standards and regulatory requirements, by reason of Factual Findings 3 through 5, and 11 through 44.

5. Cause exists to suspend or revoke Respondent's California Practice Privilege Registration pursuant to section Code sections 5096.3, subdivision (a), 5100, subdivision (g), in conjunction with California Code of Regulations, title 16, section 58, in that Respondent willfully violated applicable professional standards, by reason of Factual Findings 3 through 5, and 11 through 44.

6. Cause exists to suspend or revoke Respondent's California Practice Privilege Registration pursuant to section Code sections 5096.3, subdivision (a), and 5100, subdivision (g), in that Respondent issued an auditor's report that failed to conform to professional standards, by reason of Factual Findings 3 through 5, and 11 through 44.

7. Based on the foregoing Factual Findings and Legal Conclusions, Respondent's California Practice Privilege Registration is hereby revoked.

Costs

8. The Board is entitled to recover its reasonable costs of investigation and prosecution of this matter pursuant to Business and Professions Code section 5107. The amount of \$24,774.04 is reasonable, based on Factual Finding 44. At hearing, the underlying facts were established that support all of the causes for discipline sought by the Board. Accordingly, it would be appropriate to require Respondent to the full amount of the costs incurred by the Board, the sum of which is \$25,774.04. (See, *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.App.4th 32.) Respondent presented no evidence regarding his financial inability to pay the costs sought by the Board.

ORDER

1. Respondent's California Practice Privilege Registration No. LG 86120 is hereby revoked.

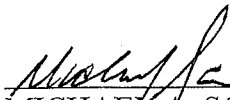
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2. Respondent shall pay the costs of investigation and prosecution of this matter in the amount of \$24,774.04.

DATED: July 17, 2012



MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2009-32

12 **NELSON S. VINSON**
1430 E. Maplegrove Street
13 West Covina, CA 91792

A C C U S A T I O N

14 **California Practice Privilege Registration**
15 **No. LG 86120**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy (Board), Department of Consumer
22 Affairs.

23 2. On or about July 21, 2008, the Board issued California Practice Privilege Registration
24 Number LG 86120 to Nelson S. Vinson (Respondent), pursuant to his licensure with the Texas
25 State Board of Accountancy, License No. F00373. The California Practice Privilege Registration
26 was in full force and effect at all times relevant to the charges brought herein and expired July 21,
27 2009 pursuant to Business and Professions Code section 5096, subdivision (f).

28 ///

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5096 states:

“(a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure which have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

(c) To obtain a practice privilege under this section, an individual who meets the requirements of subdivision (a), shall do the following:

(1) In the manner prescribed by board regulation, notify the board of the individual's intent to practice.

(2) Pay a fee as provided in Article 8 (commencing with Section 5130).

(d) Except as otherwise provided by this article or by board regulation, the practice privilege commences when the individual notifies the board, provided the fee is received

1 by the board within 30 days of that date. The board shall permit the notification to be provided
2 electronically.

3 (e) An individual who holds a practice privilege under this article:

4 (1) Is subject to the personal and subject matter jurisdiction and disciplinary
5 authority of the board and the courts of this state.

6 (2) Shall comply with the provisions of this chapter, board regulations, and
7 other laws, regulations, and professional standards applicable to the practice of public
8 accountancy by the licensees of this state and to any other laws and regulations applicable to
9 individuals practicing under practice privileges in this state except the individual is deemed,
10 solely for the purpose of this article, to have met the continuing education requirements and ethics
11 examination requirements of this state when such individual has met the examination and
12 continuing education requirements of the state in which the individual holds the valid license,
13 certificate, or permit on which the substantial equivalency is based.

14 (3) Shall not provide public accountancy services in this state from any office
15 located in this state, except as an employee of a firm registered in this state. This paragraph does
16 not apply to public accountancy services provided to a client at the client's place of business or
17 residence.

18 (4) Is deemed to have appointed the regulatory agency of the state that issued
19 the individual's certificate, license, or permit upon which substantial equivalency is based as the
20 individual's agent on whom notices, subpoenas or other process may be served in any action or
21 proceeding by the board against the individual.

22 (5) Shall cooperate with any board investigation or inquiry and shall timely
23 respond to a board investigation, inquiry, request, notice, demand or subpoena for information or
24 documents and timely provide to the board the identified information and documents.

25 (f) A practice privilege expires one year from the date of the notice, unless a
26 shorter period is set by board regulation.

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28 \\\

1 (g)(1) No individual may practice under a practice privilege without prior
2 approval of the board if the individual has, or acquires at any time during the term of the practice
3 privilege, any disqualifying condition under paragraph (2) of this subdivision.

4 (2) Disqualifying conditions include:

5

6 (B) Revocation, suspension, denial, surrender or other discipline or sanctions
7 involving any license, permit, registration, certificate or other authority to practice any profession
8 in this or any other state or foreign country or to practice before any state, federal, or local court
9 or agency, or the Public Company Accounting Oversight Board.

10 (C) Pendency of any investigation, inquiry or proceeding by or before any state,
11 federal or local court or agency, including, but not limited to, the Public Company Accounting
12 Oversight Board, involving the professional conduct of the individual.

13 (D) Any judgment or arbitration award against the individual involving the
14 professional conduct of the individual in the amount of thirty thousand dollars (\$30,000) or
15 greater.

16 (E) Any other conditions as specified by the board in regulation.”

17 5. Section 5096.3 states:

18 “(a) Practice privileges are subject to revocation, suspension, fines or other
19 disciplinary sanctions for any conduct that would be grounds for discipline against a licensee of
20 the board or for any conduct in violation of this article or regulations implementing this article.

21 (b) Practice privileges are subject to discipline during any time period in which
22 they are valid, under administrative suspension, or expired.

23 (c) The board may recover its costs pursuant to Section 5107 as part of any
24 disciplinary proceeding against the holder of a practice privilege.

25 (d) An individual whose practice privilege has been revoked may apply for a
26 new practice privilege not less than one year after the effective date of the board's decision
27 revoking the individual's practice privilege unless a longer time period, not to exceed three years,
28 is specified in the board's decision revoking the practice privilege.

1 (e) The provisions of the Administrative Procedure Act, including, but not
2 limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the
3 board shall apply under this article.”

4 6. Section 5100 states:

5 "After notice and hearing the board may revoke, suspend, or refuse to renew any permit or
6 certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing
7 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
8 conduct that includes, but is not limited to, one or any combination of the following causes:

9

10 “(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in
11 the application for a license, in obtaining a certificate as a certified public accountant, in obtaining
12 registration under this chapter, or in obtaining a permit to practice public accountancy under this
13 chapter.

14 “(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same
15 or different engagements, for the same or different clients, or any combination of engagements or
16 clients, each resulting in a violation of applicable professional standards that indicate a lack of
17 competency in the practice of public accountancy or in the performance of the bookkeeping
18 operations described in Section 5052.”

19

20 “(g) Willful violation of this chapter or any rule or regulation promulgated by the board
21 under the authority granted under this chapter.”

22 7. Section 498 states:

23 “A Board may revoke, suspend, or otherwise restrict a license on the ground that
24 the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact
25 or by knowingly omitting to state a material fact.”

26 8. Section 5062 of the Code provides that a licensee shall issue a report which conforms
27 to professional standards upon completion of a compilation, review or audit of financial
28 statements.

9. California Code of Regulations, title 16, section 58, provides that licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards.

10. Section 5107, subdivision (a), of the Code states:

"The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

PROFESSIONAL STANDARDS

11. Generally Accepted Auditing Standards ("GAAS") are issued by the American Institute of Certified Public Accountants (AICPA). The ten general, field work, and reporting standards outlined by GAAS (AU §150), which are interrelated, are discussed in the Statements on Auditing Standards ("SAS"). The SAS are codified by "AU" number in the AICPA's Codification of Statements on Auditing Standards.

12. Standards applicable to the performance of an agreed-upon procedures agreement are discussed in the Statements on Standards of Attestation Engagements (SSAE) and are codified by “AT” number.

13. Reporting (disclosures) standards required by GAAS are issued by either the Financial Accounting Standards Board (FASB) or its predecessor, the Accounting Principles Board (APB). “FASB” or “APB” denotes pronouncements issued by these bodies.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts)

14. Respondent is subject to discipline pursuant to Code sections 5096.3, subdivision (a), and 5100, subdivision (c), in that Respondent committed gross negligence, and/or, repeated acts of negligence, for issuing an "Audit Report" for Lin-Ros Best Home Care, Lin-Ros Best Home Care No. 2, and MVM Home for the years ended December 31, 2006 and December 31, 2007.

Respondent's audit report failed to follow professional standards for an attestation and audit engagement and contained extreme departures from generally accepted auditing standards and regulatory requirements. The specific acts and standards of practice that were violated, that collectively constitute gross negligence, and/or, repeated negligent acts, are as follows:

Agreed Upon Procedures Report

a. Respondent issued an agreed upon procedures report that did not follow professional standards for an attestation engagement, in that it did not comply with AT section 201.31.

Audit Report

b. Respondent issued an audit report that failed to conform to professional standards outlined in AU section 508.08 as follows:

1. The audit report failed to include the word *independent* in the title.
2. The audit report failed to identify the United States of America as the country of origin for the generally accepted auditing standards used.
3. The auditor's opinion failed to include the phrase, "in all material respects;" does not opine on the cash flow statement; only refers to the year ended December 31, 2007 for the results of operations, rather than all periods presented; and, fails to identify the United States of America as the country of origin for the generally accepted accounting principles used.

c. Respondent failed to disclose the reasons for issuing an adverse opinion, which failed to conform to AU sections 508.59, 508.60 and 508.41.

d. Respondent stated in the audit report that he did not confirm accounts payable or accounts receivable, and instead performed alternative procedures. Pursuant to AU section 508.24, such a statement is inappropriate if in the auditor's judgment the alternative procedures were sufficient, as the reader of the audit report may believe that the scope limitation applies.

e. Respondent's auditor's opinion does not indicate the degree of responsibility that Responding took with respect to supplementary information that is submitted with the basic financial statements, which fails to conform to AU sections 551.05 and 551.06.

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1 Report on Internal Control

2 f. Respondent issued a report on internal control that did not conform to professional
3 standards AU sections 325.09, 325.10, 325.11, 325.13 and 325.19, in that Respondent issued a
4 report on internal control for the Lin-Ros Best Home Care partnership as part of his audit of Lin-
5 Ros Best Home Care, Lin-Ros Best Home Care #2 and MVM Home for the year ended
6 December 31, 2007. Respondent's primary responsibility was to audit the financial statements of
7 the above named companies, and Respondent should not have issued a separate opinion on the
8 internal control system of the companies. Rather, Respondent should have communicated either
9 orally or in writing to the owners of the companies being audited the reportable conditions and/or
10 weaknesses that he noted; or, if the intent of the owners of the companies was for Respondent to
11 perform an examination of the company's internal control system, then Respondent should have
12 issued a separate report on the effectiveness of the entities' internal control that was in accordance
13 with the AICPA's Statements for Attestation Engagements.

14 Financial Statements

15 g. Respondent failed to present a change in the partners' capital accounts in the basic
16 financial statements, income statements, or in the notes to the financial statements, which failed to
17 conform to APB No. 12, paragraph 10.

18 Notes to the Financial Statements

19 h. Respondent failed to include informative disclosures with the audited financial
20 statements as required by GAAS' third standard of reporting, and applicable standards as follows:

- 21 1. Summary of Significant Accounting Policies (APB No. 22, paragraphs 8, 12, and
22 13).
- 23 2. Allowance for Doubtful Accounts (FAS No. 4, paragraphs 8 and 22; APB No. 12,
24 paragraph 3).
- 25 3. Depreciation and Amortization Methods (APB No. 12, paragraph 5).
- 26 4. Related Party Transactions (FAS No. 57, paragraph 2).
- 27 5. Long-Term Debt (FAS No. 47, paragraph 10).
- 28 6. Capital and Operating Leases (FAS No. 13, paragraph 16).

1 7. Statement of Cash Flows (FAS No. 95, paragraph 29).

2 Working Papers

3 i. Respondent failed to adequately define the overall audit strategy for the audit, which
4 failed to conform to GAAS' second standard of fieldwork, and AU sections 311.14 and 311.16.
5 Specifically, Respondent prepared a document entitled "Audit Plan" that included general client
6 information, audit objectives, and audit procedures. The Audit Plan failed to include discussions
7 of industry specific reporting, materiality levels, preliminary identification of risk of material
8 misstatements, or consideration of fraud.

9 j. Respondent failed to document in the working papers the audit team's discussions of
10 material misrepresentations due to error or fraud, which failed to conform to AU sections
11 314.122, and 316.83.

12 k. Respondent failed to consider audit risk or determine a materiality level, which failed
13 to conform to AU sections 312.11, 312.12, 312.13 and 312.27.

14 l. Respondent failed to document that he evaluated the five components of internal
15 control, or that Respondent evaluated the risk of material misrepresentations in the financial
16 statements, which failed to conform to GAAS' second standard of field work, and AU sections
17 314.40 and 314.102.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Violation of Professional Standards)**

20 15. Respondent is subject to discipline pursuant to Code sections 5096.3, subdivision (a),
21 and 5100, subdivision (g), in conjunction with California Code of Regulations, title 16, section
22 58, in that Respondent willfully violated applicable professional standards. The circumstances of
23 this violation are set forth in paragraph 14, above, which is incorporated herein by reference.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Failure to Issue Report in Accordance with Professional Standards)**

26 16. Respondent is subject to discipline pursuant to Code sections 5096.3, 5100,
27 subdivision (g), and 5062, in that Respondent issued an auditor's report that failed to conform to
28

1 professional standards. The circumstances of this violation are set forth in paragraphs 14, above,
2 which is incorporated herein by reference.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Fraud, Deceit, and/or, Misrepresentation or Omission of Material Fact)**

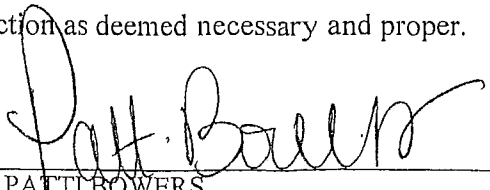
5 17. Respondent is subject to discipline pursuant to Code sections 5096.3, subdivision (a),
6 5100, subdivision (b), and 498, in that Respondent secured his California Practice Privilege
7 Registration by fraud, deceit, or knowing misrepresentation of a material fact, or by knowingly
8 omitting to state a material fact. Specifically, Respondent does not qualify for a California
9 Practice Privilege pursuant to Code section 5096, subdivision (a), and knowingly omitted to state
10 in his application for California Practice Privilege that he does not have a principal place of
11 business located outside of the State of California. Since receiving his Texas Certified Public
12 Accountant License in April 2003, Respondent has not practiced public accountancy or
13 maintained an office, independently or at a client's office, and/or, residence, in the State of Texas
14 or any other state.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the California Board of Accountancy issue a decision:

- 18 1. Revoking or suspending or otherwise imposing discipline upon California Practice
19 Privilege Registration Number LG 86120, issued to Nelson S. Vinson;
20 2. Ordering Nelson S. Vinson to pay the California Board of Accountancy the
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
22 Professions Code section 5107;
23 3. Taking such other and further action as deemed necessary and proper.

24
25 DATED: December 7, 2009


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant